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September 15, 2006

By Hand

Ms. Mary L. Cottrell
Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: NSTAR Electric Company, D.T.E. 06-40

Dear Ms. Cottrell:

On behalf of The Energy Consortium, I enclose for filing in the above-referenced docket one original and eight copies of the Reply Brief of The Energy Consortium.

Kindly date stamp the enclosed copy of this letter and return same to our messenger.

Thank you for your attention to this matter.

Sincerely yours,

Mary Beth Gentleman

MBG:jrd
Enclosures
cc: Joan Foster Evans, Hearing Officer (2 copies)
Paul Osborne, Rates and Revenue Requirements Division (1 copy)
Meera Bhalotra, Rates and Revenue Requirements Division (1 copy)
Jeff Hall, Rates and Revenue Requirements Division (1 copy)
Joseph Passaggio, Rates and Revenue Requirements Division (1 copy)
Shashi Parekh, Electric Power Division (1 copy)
Service List

B3255066.1

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company, Cambridge Electric Light Company, Canal Electric Company and Commonwealth Electric Company d/b/a NSTAR Electric	)	D.T.E. 06-40

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the Reply Brief of The Energy Consortium upon the Department of Telecommunications and parties of record in accordance with the requirements of 220 C.M.R. 1.05 (Department's Rules of Practice and Procedures).

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Dated: September 15, 2006

COMMONWEALTH OF MASSACHUSETTS

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Boston Edison Company, Cambridge Electric Light Company, Canal Electric Company and Commonwealth Electric Company d/b/a NSTAR Electric	)	D.T.E. 06-40

REPLY BRIEF OF THE ENERGY CONSORTIUM

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Dated: September 15, 2006

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REPLY BRIEF OF THE ENERGY CONSORTIUM

I. INTRODUCTION

The Energy Consortium files this reply brief in response to certain issues raised in the initial brief of Boston Edison Company, Cambridge Electric Light Company ("Cambridge"), Canal Electric Company and Commonwealth Electric Company d/b/a NSTAR Electric (collectively, "NSTAR" or the "Companies") in the above-captioned proceeding. As NSTAR's Initial Brief was essentially a restatement of positions asserted in its initial filing (Exh. NSTAR-CLV-1-11), only a few points require a response beyond those of The Energy Consortium's Initial Brief ("TEC Initial Brief").[1]

II. ARGUMENT

A. NSTAR has failed to demonstrate how Standby Service rate increases are in the public interest.

1. Biogen Idec is not the only customer likely to be adversely affected.

Although NSTAR continues to advance the myth that no customers will be adversely affected by its proposed Standby Service rate increases (*id.* at 27), the record in this case

[1] Silence by TEC in this Reply Brief with respect to any issue raised in the NSTAR Initial Brief should not be construed as agreement.

documents otherwise. In its Initial Brief, NSTAR focuses myopically on one customer which is subject to the SB-G3 rate pursuant a special contract.[2] *Id.* If the Department of Telecommunications and Energy (the "Department") approves a proposed amendment to that special contract (Exh. DTE-3 (Supp), Att. RR-DTE-3), NSTAR may succeed in insulating that particular customer from the effects of this rate increase. However, Biogen it is not the only on-site generation customer in NSTAR's cross hairs. The Companies' witness, Mr. LaMontagne, indicated that Cambridge is aware of two additional customers planning to install distributed generation facilities that qualify for service under Rate SB-G3 (Exh. MIT-2-1; Tr. 2, at 195).[3] Mr. LaMontagne estimated that the capacity of those two new facilities plus the Biogen facility would be approximately 15 megawatts ("MW") (Tr. 2, at 195).[4] NSTAR's Initial Brief is utterly silent on how those additional customers, as NSTAR asserts, "are being held harmless from the effect of the proposed merger." NSTAR Initial Brief at 27.

In addition to Mr. LaMontagne's admission, the Massachusetts DG Collaborative 2006 Report documents that between the second quarter of 2004 and the first quarter of 2006, NSTAR received 179 distributed generation ("DG") interconnection applications and approved 148 of them, totaling over 10 MW (Exh. TEC-1, Table 2 "DG Data Tracking for the period Q2 2004 through Q1 2006 for all DG applications submitted to the Distribution Companies", at 31.)[5]

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[2] Though not identified in the NSTAR Initial Brief, NSTAR has previously identified that customer as Biogen Idec whose Agreement for Standby and Supplemental Service for its 5 MW facility in Cambridge was approved by the Department on February 17, 2005 (Exh. DTE-3 (Supp), Att. RR-DTE-3).

[3] According to Mr. LaMontagne, this expectation is based on "indications [the Company] received from customers of their intent to potentially install on-site generation of sufficient capacity to qualify for standby service rates" (Tr. 2, at 195).

[4] Mr. LaMontagne also indicated that Cambridge has been notified by seven customers of their intent to install an additional 5.5 MW of on-site generation (Exh. MIT-2-6).

[5] NSTAR was a signatory of the Massachusetts DG Collaborative 2006 Report submitted in D.T.E. 02-38-C. *Id.* at 1.

While the Report indicates that most of the 148 projects completed the "Simplified" or "Expedited" interconnection process, there were seven that completed the "Standard Process," indicative of larger projects.[6] *Id.* at 31-32. In addition, Table 2 of the Report shows that there are 22 other applications from larger "Standard Process" projects pending. *Id.* at 31.

Because Mr. LaMontagne had not reviewed the applications referenced in that Report nor summaries of them (Tr. 2, at 203), the record in this case remains unclear as to whether the two additional SB-G3 eligible facilities of which he had knowledge are included in the DG Collaborative Report list or are in addition to those listed. What is clear, however, is that Biogen is not the only customer known to be at risk from NSTAR's proposed Standby Service rate increase.

2. A delay in implementation of higher Standby Service rates does not satisfy the public interest standard under G.L. c. 164, § 96.

In its Initial Brief, NSTAR continues to oppose any delay in its proposed Standby Service rate increase, arguing that "no customers would experience an adverse rate impact, [so] there is no basis for a rate phase-in . . . . *Id.* Only "if required" by the Department would NSTAR reluctantly acquiesce to a six month delay. NSTAR Initial Brief at 28. The Companies suggest that this "additional notice" is somehow "a reasonable compromise as to the potential impact of the rate change in its standby tariff." *Id.*

This is not a compromise; it is merely a delay in a significant rate increase for customers planning on-site generation projects. Suspending a 239 percent rate increase (Exh. RR-TEC-2(Att. AG-2-2(b1) at 8)) for six months is a meaningless gesture. DG investment decisions are based on long term cost analyses (Tr. 2, at 182-184). A six-month amnesty would have little

[6] These statistics are from data tracking spreadsheets completed by NSTAR. *Id.* at 31.

impact on a life-cycle cost analysis of a facility strapped with a 239 percent rate increase for the balance of its 15 to 20 year engineering life.[7]

The standard of review for mergers under G.L. c. 164, § 96 is not whether customers have sufficient notice of rate increases. NSTAR has the burden of demonstrating how the cost of these rate hikes is offset by benefits sufficient to warrant their allowance. *See, Boston Edison Company*, D.T.E. 99-19, at 10-11 (1999), citing *Eastern-Colonial Acquisition*, D.T.E. 98-128, at 5-6 (1999); *NIPSCO-Bay State Acquisition*, D.T.E. 98-31, at 9-10 (1998); *Eastern-Essex Acquisition*, D.T.E. 98-27, at 8 (1998); *Boston Edison Company/Boston Edison Mergeco Electric Company*, D.P.U./D.T.E. 97-63, at 7 (1998); *Mergers and Acquisitions*, D.P.U. 93-167-A at 18-19 (1995). The NSTAR Initial Brief is silent on how the sparse and speculative benefits of the merger as proposed (Exh. DTE-2-1; MIT/Harvard Initial Brief at 5-7) will offset the thousands of dollars in incremental costs to individual customers (Exh. RR-DTE-1) or hundreds of thousands of dollars in aggregate incremental costs to Cambridge customers planning to install on-site generation.[8] NSTAR has therefore not sustained its burden of demonstrating how the proposed merger, as currently adorned with the Standby Service rate increase, is in the public interest.

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[7] As noted in the TEC Initial Brief at fn. 6, even with NSTAR's implausible assumptions, bill increases of between 3 and 7 percent are predicted (Exh. RR-DTE-1(Supp) (Att. RR-DTE-1(b), at 1)). Inclusion of competitive supply charges in that analysis is also misleading as it dilutes the percentage increase to the customer in the delivery charge. Netting out the competitive supply charges assumed by NSTAR, and holding all other NSTAR assumptions constant, the increase in delivery charges in the Typical Bill Analysis is as follows: 1 outage = 18.7% increase; 2 outages = 13.6% increase, and 3 outages = 9.8% increase in delivery charges as a result of the proposed contract demand charge increase.

[8] In Exh. RR-MIT-2, at 1, NSTAR estimated that a 20 MW contract demand customer would incur an incremental cost of $400,000 per year. By interpolation, the 10 new MW of on-site generation which Mr. LaMontagne anticipates coming on line in the short run in Cambridge, (Tr. 2, at 195), (LaMontagne's 15 MW aggregate estimate minus the 5 MW Biogen facility) would be expected to incur a $200,000 cost penalty per year.

B. NSTAR's Initial Brief is silent on significant procedural and timing issues raised in discovery and during the evidentiary hearings.

In the Executive Summary of its Initial Brief, NSTAR asserts that there are no longer "any practical or legal impediments" to the consolidation of the Companies. NSTAR Initial Brief, at i. NSTAR points to the January 2, 2007 date in Section 2.16 of the Settlement Agreement in D.T.E. 05-85 as the deadline for the merger to occur. *Id.* at 5. However, in its Initial Brief NSTAR does not explain how that date can be feasible for the merger, as currently proposed, in light of several significant procedural and timing issues uncovered during the discovery and evidentiary hearings phases of this proceeding.

1. NSTAR does not know when the 115 kV upgrades will be completed, a condition precedent for the 13.8 kV reclassification.

A pivotal issue in this case is whether the second new 115 kV line in Cambridge (hereinafter, the "Putnam Line") needs to be built and operating before the 13.8 kV assets can be properly reclassified as distribution assets under the Federal Energy Regulatory Commission's ("FERC's") seven-part test. At the outset of the case, NSTAR stated unequivocally that the second line was an essential element for changing the function of the 13.8 kV system:

> However, with the recent completion of the East Cambridge Substation, Cambridge is no longer reliant on the Kendall Generation Station for servicing any of the load requirements of its customers. As such, facility changes have occurred where the Kendall Generating Station is now interconnected to the Cambridge system through a 115 kV line to its new East Cambridge Substation *and through a second 115 kV line to its Putnam Substation*. Thus the function of the 13.8 kV system has shifted from a transmission system to a more typical distribution system, where its function is to supply power to local distribution customers.

(Exh. NSTAR-CLV-1, at 21)(emphasis supplied).

However, as evidence of unresolved engineering issues and an unknown completion date for the Putnam Line began to surface (Exh. NSTAR-CLV-1, at 21-22 (Revised)); Exh. AG-5-

4(a)), NSTAR's position seems to have evolved 180 degrees. In their Initial Brief, the Companies now assert that "even with the single 115 kV line in place, the operational nature of the 13.8 kV facilities would be changed to distribution." NSTAR Initial Brief at 24. If that were the case, why is Cambridge still reliant on the Kendall Generation Station for servicing its load requirements? Why hasn't the Kendall RMR been terminated? The answer is clear:

> The timing of when the SCR/RMR payments will be terminated is dependent on the completion of the second transmission line to the new substation. NSTAR Electric will notify the ISO-NE and Mirant that the Kendall generation would not be needed for local reliability *after resolution of the 115 kV installation issue*. The contractual notice period is 120 days.

(Exh. AG-5-4(d)) (emphasis supplied). Until NSTAR gives notice of termination to Mirant under the Kendall RMR, the Department can be sure that reclassification would be premature.

NSTAR argues vigorously that changing classification at any other time but year-end creates a degree of complexity seemingly beyond its capabilities to manage. NSTAR Initial Brief at 25. Deferring to NSTAR on that point, the merger and reclassification should occur at such year-end as the 115 kV facilities are complete and operational, the Kendall RMR has been terminated, and the 13.8 kV assets are consequently no longer performing their historical functions.

2. NSTAR has not yet filed a distribution cost of service study for the transfer of the 13.8 kV assets.

Despite a large volume of discovery and lengthy cross-examination by the Department staff and others on the flaws inherent in NSTAR's proposal to transfer 2006 transmission-based revenue requirements into distribution rates (*see, e.g.,* Tr. 3, at 387-412; Exh. AG-2-14; Exh. AG-4-1), NSTAR offers no alternative approach in its Initial Brief. *Id.* at 24-26. Nor does it reference in its Initial Brief any regulatory authority or precedent for its proposed approach.

NSTAR does finally concede that "the precise methodology for the rate transfer is not included in the [Rate] Settlement Agreement." *Id.* at 24. More precisely, there is no "methodology" included in that Agreement, nor need there be, given the Department's well-established rate-setting principles for distribution assets. At this point, NSTAR leaves the Department no choice but to request of NSTAR that it file a revenue requirements analysis for the 13.8 kV assets based on the Department's ratemaking principles. TEC agrees with the Attorney General, the lead party in the Rate Settlement Agreement in D.T.E. 05-85, that the ratemaking for the 13.8 kV assets should be handled in a separate proceeding, properly noticed under G.L. c. 164, § 94. Attorney General's Initial Brief at 12. For the reasons set forth in TEC's Initial Brief and section II.B.1, *infra*, this should cause little, if any, actual delay beyond the construction-dependent delay in the reclassification of the 13.8 kV assets. TEC Initial Brief at 9-10, 20-21.

3. NSTAR has not yet convinced FERC that the merger is in the public interest.

On May 26, 2006, NSTAR filed with FERC an Application to Merge under Section 203 of the Federal Power Act. A copy of that filing was included as an exhibit to the prefiled testimony of NSTAR witness Vaughn (Exh. NSTAR-CLV-3). The Initial Brief of the Massachusetts Institute of Technology (MIT) and President and Fellows of Harvard College (hereinafter, "MIT/Harvard Initial Brief) noted that "FERC has recently issued the Company a deficiency letter for failing to submit a plan to protect ratepayers from increases in transmission rates." *Id.* at 18. That deficiency letter is an interlocutory order in FERC Docket No. EC06-126-000 and is included here as Attachment A.[9] It provides in relevant part:

[9] To the extent that the Department believes that reference to this interlocutory order requires the taking of administrative notice of the order by the Department, TEC hereby respectfully requests that the Department take

> In the instant filing, Applicants have neither offered any ratepayer protection mechanisms, nor have they adequately explained how the proposed merger will provide ratepayer protection in light of the fact that Applicants concede in their application that "the consolidation of the Applicants' transmission facilities could increase costs to some customers . . ." (See Application at footnote 24; see also Applicants' Answer at Footnote 6). Please show how the proposed merger meets the requirements of Order No. 642 cited above, in view of the fact that Applicants concede that some customers' costs may increase as a result of the consolidation. Specifically, Applicants should either offer adequate ratepayer protection mechanisms or provide evidence to demonstrate their claim that "[t]he Transaction will have no adverse effect on rates" (Application at 11, footnote omitted), e.g., show how the admitted potential cost increases to customers will be offset by commensurate benefits.

In its Initial Brief, NSTAR does not mention having received this order in late August nor do the Companies discuss the implications of this ruling on NSTAR's plan to consummate the merger, as proposed, by January 2, 2007. Under § 2.16 of the Rate Settlement Agreement, implementation of the merger by that date was clearly conditioned on receipt of necessary approvals from the Department and FERC. This is yet another significant procedural and timing question which NSTAR chose not to address in its Initial Brief.

C. The merger as proposed is not revenue neutral from the customer perspective.

As detailed in the MIT/Harvard Initial Brief, the proposed merger will increase congestion costs for Cambridge customers from 7 percent to 8 percent of NEMA congestion costs. MIT/Harvard Initial Brief at 15. Moreover, Cambridge customers will pay 8 percent of SEMA's congestion costs of which they now pay none. *Id.* From the perspective of those customers, that is a rate increase, not revenue neutrality. Similarly, Commonwealth's customers are likely to see a substantial increase in Basic Service prices. (Initial Brief of Retail Energy

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administrative notice of the interlocutory order which is relevant to the "public interest" standard in this case, speaks for itself, and was issued by a regulatory agency after the close of evidentiary hearings in this case.

Supply Association at 9-10; fn. 30.) NSTAR continues to view "rate neutrality" only through NSTAR's lens and not those of its customers. Just as the Department must consider the "fairness of the distribution of benefits resulting from a proposed merger or acquisition between shareholders and ratepayers" (*Mergers and Acquisitions*, D.T.E. 93-167-A, at 8 (1994)), so too it should consider the distribution of harm among the customers in the existing franchise areas, and require appropriate mitigation measures.

III. CONCLUSION

For the reasons set forth above and in the TEC Initial Brief, TEC requests that any approval of the proposed merger be conditioned as follows:

A. the reclassification of the 13.8 kV transmission assets to distribution assets should become effective no earlier than (i) the commercial date of operation of the Putnam Line, (ii) transfer of load to the East Cambridge Substation, and (iii) approval by the Department of distribution revenue requirements for those assets based on the Department's rate-making requirements;

B. the proposed increases in contract demand charges to the SB-G2 and SB-G3 rates of Cambridge should be rejected as anti-competitive and contrary to the Standby Rate Settlement Agreement;

C. the proposed further consolidation of Basic Service pricing should be rejected as potentially adverse to the development of a competitive retail market, and

D. customers should receive certain credits and be shielded by NSTAR from costs associated with delay in the construction of the Putnam Line, as set forth in Section IV.D of the TEC Initial Brief.

Respectfully submitted,

THE ENERGY CONSORTIUM

By its attorneys,

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Dated: September 15, 2006

B3251952

Attachment A

FEDERAL ENERGY REGULATORY COMMISSION
Washington, DC 20426

August 25, 2006

Boston Edison Company
Cambridge Electric Light Company
Commonwealth Electric Company
Canal Electric Company
Docket No. EC06-126-000

Neven Rabadjija, Esq.
Associate General Counsel
NSTAR Electric & Gas Corporation
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Dear Mr. Rabadjija and Mr. Gentile:

On May 26, 2006, Boston Edison Company (BECo), Cambridge Electric Light Company (Cambridge), Commonwealth Electric Company (Commonwealth), and Canal Electric Company (Canal) (collectively, Applicants) filed an application pursuant to section 203 of the Federal Power Act (FPA) requesting authorization for BECo to acquire the jurisdictional facilities of its affiliates, Cambridge, Commonwealth, and Canal. Please be advised that the filing is deficient. Order No. 642 permits the Commission to request additional information from applicants when necessary to determine whether the transaction is consistent with the public interest. A specific request is set forth below. If you believe it would be helpful to provide additional information or documentation beyond your response to the request, please do so.

Order No. 642 states that "if applicants do not offer any ratepayer protection mechanism, they must explain how the proposed merger will provide adequate ratepayer protection." (Order No. 642 at 31,914) In the instant filing, Applicants have neither offered any ratepayer protection mechanisms, nor have they adequately explained how the proposed merger will provide ratepayer protection in light of the fact that Applicants

concede in their application that "the consolidation of the Applicants' transmission facilities could increase costs to some customers . . ." (See Application at footnote 24; see also Applicants' Answer at footnote 6). Please show how the proposed merger meets the requirements of Order No. 642 cited above, in view of the fact that Applicants concede that some customers' costs may increase as a result of the consolidation. Specifically, Applicants should either offer adequate ratepayer protection mechanisms or provide evidence to demonstrate their claim that "[t]he Transaction will have no adverse effect on rates" (Application at 11, footnote omitted), e.g., show how the admitted potential cost increases to customers will be offset by commensurate benefits.

This order is issued pursuant to 18 C.F.R. § 375.307(n)(2)(2006) and 18 C.F.R. § 33.10 and is interlocutory. Pursuant to 18 C.F.R. § 385.713, this order is not subject to rehearing. Please provide the requested information within 15 business days. Documents filed with the Commission for which confidentiality is sought may be filed under the terms of 18 C.F.R. § 388.112.

Your full and prompt response will aid in analysis of and action on the application. Failure to respond in the time provided may delay or affect analysis of and action on the application.

Sincerely,

Steve P. Rodgers
Director
Division of Tariffs and Market Development – West